

REMARKS

Prior to the Office Action of March 24, 2005, applicant submitted an Information Disclosure Statement including a Declaration of Don Kamis and four attachments, Exhibits A, B, C and D. These exhibits comprise various brochures, study reports and technical specifications. Exhibits A and B bear dates of November 2000 and November 2001, respectively. Thus, to the extent they are considered printed publications (as the Examiner contends and to which applicant disagrees), they would be prior art to the present application in that such dates are more than one year prior to the filing date of the present application and its corresponding provisional application to which benefit is claimed.

Exhibit C bears a date of December 2000, but it has not been specifically applied by the Examiner. Accordingly, it is assumed that Exhibit C is not considered by the Examiner to be a "printed publication" under § 102(a) or for the product referred to therein to have been "on sale" under § 102(b) as of such date.

Exhibit D bears a date of September 11, 2002 and has not been applied by the Examiner. Because the present application was filed within one year of the Exhibit D date and because the present application claims benefit to an earlier filed provisional application as of August 20, 2002, Exhibit D is not prior art to the present application even if it was considered to be a "printed publication" or to evidence the product referred to therein as being "on sale".

In addition to the rejections based on Exhibits A and B as "printed publications", independent claim 1 was rejected under § 102(b) as being anticipated by Hughes UK Patent Application No. 2,288,772 A (Hughes) and claims 2, 6, 8, 9 and 12 were rejected under § 103(a) as being unpatentable over *Hughes* in view of Kitchen Patent No. 5,655,909 (Kitchen). Claims 13-20 were rejected only based on Exhibits A and B.

Notwithstanding Applicant's disagreement with the Examiner's characterization of Exhibits A and B as "printed publications", independent claims 1 and 12 have been amended to define subject matter which patentably distinguishes from the disclosures in Exhibits A and B as well as the Hughes and Kitchen patents, both individually and in combination. Claims 14-20 remain unchanged. As discussed below, claims 14 and 15 as presently drafted are considered to be patentable over Exhibits A and B as well as the Hughes and Kitchen patents. The patentability of claims 16-20 depend upon whether Exhibits A and B are characterized as

“printed publications”. New independent claims 21 and 22 have been added. These claims define subject matter patentable over Exhibits A and B as well as the Hughes and Kitchen patents. Reconsideration in view of the following comments is respectfully requested.

Independent claim 1, and thus its respective dependent claims, have been amended to require one or more of the air intake openings in the housing to “face upwardly”. This is clearly shown in the drawings (Figures 1-3, 7 and 8) and described in the specification. As amended, independent claim 1 is clearly distinguishable from the structures shown in Exhibits A and B as well as the structures shown in the Hughes and Kitchen patents. Specifically, to the extent such references disclose air intake openings, they are laterally disposed and do not face upwardly. Further, there is no suggestion in any of the references that it would have been obvious to modify any of the structures therein to provide them with upwardly facing air intake openings, nor is there any motivation to do so.

Accordingly, it is believed that independent claim 1 and dependent claims 2-6, 8 and 9 are patentable. Their allowance is respectfully requested.

Independent claim 12 has been amended to require the noise attenuation stack to be generally vertically disposed and to incorporate the limitations of original claim 13, namely, to require the stack to include an open top or a plurality of openings in said top. These structural features are also not disclosed in either Exhibits A or B or the Hughes or Kitchen patents. In Exhibits A and B, as well as in the Hughes and Kitchen patents, the air is drawn in horizontally through grates which open horizontally. There is absolutely no disclosure of a structure with a generally vertically disposed noise attenuation stack in which the stack includes an open top or a plurality of openings in the top. Accordingly, it is submitted that independent claim 12 as amended is patentable. Allowance is respectfully requested.

Independent claim 14 and dependent claim 15 remain unchanged. Independent claim 14 is directed to a closed circuit system in which the air which is propelled upwardly through the flight chamber and is recirculated back to the noise attenuation housing. Specifically, independent claim 14 requires at least one fan positioned below the flight chamber, a substantially closed hood above the flight chamber, a plurality of openable and closable louvers in the hood and one or more recirculation columns between the hood and the noise attenuation housings. *Hughes* and *Kitchen* do not disclose these features and in fact have not been applied

by the Examiner to this claim. Although Exhibit A (page A-10) and Exhibit B (second to the last page) disclose a closed circuit system, it fails to disclose a fan positioned below the flight chamber and a plurality of openable and closeable louvers in the hood.

Accordingly, it is submitted that independent claim 14 and its dependent claim 15 are in condition for allowance. Such action is respectfully requested.

Claims 16-20 remain without change. The only references which have been applied to these claims are Exhibits A and B. Thus, their patentability is determined by whether Exhibits A and B are characterized as “printed publications”. Applicants respectfully disagree with the Examiner’s characterization of Exhibits A and B as “printed publications” in that to the extent any was distributed, the numbers were limited and the material distributed was not generally available other than through a specific request from ASE, the originator of the exhibits. Accordingly, reconsideration is respectfully requested with respect to this issue.

New independent claim 21 has been added. Claim 21 requires a plurality of fans below the flight chamber with air inlet ducts extending radially outwardly from below the flight chamber, a noise attenuation stack, a canopy extending radially outwardly from the flight chamber to said noise attenuation stack and a plurality of air inlet openings in said stack at a point above the canopy. This structure is shown specifically in Figures 1-4, 7 and 8. Neither Exhibits A and B nor the Hughes or Kitchen references disclose any such structure. Specifically, none of such references disclose both a canopy and a noise attenuation stack with the stack having air inlet openings positioned above the canopy.

New independent claim 22 and dependent claim 23 have been added. Independent claim 22 is directed to a closed system requiring a noise attenuation housing having an air inlet opening upwardly and a recirculation column in communication with the noise attenuation housing wherein a first portion of the air inlet is open to atmospheric air and a second portion of the inlet is in communication with the recirculation column. This structure is shown in Figures 9 and 10. None of Exhibits A or B or the Hughes or Kitchen patents discloses such a structure.

For all of the above reasons and particularly in view of the amendments to the claims, the discussion of the prior art references and distinctions between the claims and such references, it is submitted that all of the claims are now in condition for allowance and such action is respectfully requested.

If the Examiner has any questions or believes that a telephone conference would expedite prosecution, he is respectfully requested to telephone the undersigned.

Respectfully submitted,

DORSEY & WHITNEY LLP

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By: David N. Fronek
David N. Fronek
Reg. No. 25,678
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498
(612) 340-2629